

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 814 OF 2006
IN
CHAMBER SUMMONS NO. 457 OF 2006
IN
SUIT NO. 1457 OF 2001

1. Ebasco Finance Pvt. Ltd. & Anr.] .. Appellants
(Ori.Def.1 & 3)

Versus

1. Deepak Builders Pvt. Ltd. & 2 ors.] .. Respondents
(Ori.Plntff. Def.
No.2 & Respdt.)

Mr. D.S. Parikh, senior counsel with Mr. I. Vyas i/b
M/s. Bilawala & Co. for the appellants.

Mr. D.D. Madon, senior counsel with Mr. Birendra B.
Saraf i/b Krishna Tanna for the respondent No.1.

Mr. D.V. Deokar, Ist Asstt. to Court Receiver present.

CORAM: R.M. LODHA, &
S.A. BOBDE, JJ.

DATED: 20TH NOVEMBER, 2006

P.C. :

. We heard the senior counsel for the parties
and perused the Consent Terms dated 2nd August, 2001 and
the impugned order.

2. By the Consent Terms, the decree was granted
in favour of the respondent No.1 (plaintiff) against the
present appellant No.1 (original defendant No.1) in

terms of prayer clauses (a), (b)(i) & (b)(ii) of the
Plaint, which read thus:

"(a) that this Hon'ble Court be pleased to declare that Plaintiff their agents, servants, directors, assignees, successor in interest and all person claiming through the Plaintiff are entitled to a right of way having 8 meters width and passing through the suit property being Plot No.Z-2 admeasuring 1425.4 square meters situate lying and being at sub division lay out of "Bhawani Nagar" Village Marol, Taluka Andheri, Bombay Suburban District, which right of way is delineated in brown colour wash and marked with letters "A" and "B" to "C" and "D" on the plan annexed hereto and marked as Exhibit "A" being the same plan annexed as plan No. 2 to the Supplemental Agreement dated 19 December 2000 (Exhibit "D" hereto);

(b) That Defendant No.1, its agents, servants, directors, assignees, successor in interest and all person claiming through Defendant No.1 be restrained by a permanent order and injunction of this Hon'ble Court from

(i) in any manner interfering with the Plaintiff's enjoyment of the said right of way having 8 meter width passing through the suit property and its delineated in brown colour wash and marked with letters "A" and "B" to "C" and "D" on the plan being Exhibit "A" hereto by encroaching upon and/or obstructing and/or putting up any construction or obstruction thereon or otherwise howsoever; and

(ii) in any manner carrying on any further construction on the suit property being Plot No.Z-2 admeasuring 1425.4 square meters situate lying and being at sub division lay out of "Bhawani Nagar" Village Marol, Taluka Andheri, Bombay Suburban District, on the basis of any plans

prepared/sanctioned having the right of way less than the 8 meters wide as delineated in brown colour wash and marked with letters "A" and "B" to "C" and "D" on the plan annexed hereto and marked as Exhibit "A".

3. Thus, by Consent Terms the original plaintiff (respondent No.1) their agents, servants, directors, assignees, successors in interest and all persons claiming through the plaintiff have been declared to be entitled to a right of way having 8 meters width passing through the suit property situate at Andheri. More particularly right of way has been delineated in brown colour wash and marked with letters "A" and "B" to "C" and "D" on the plan Exhibit "A" annexed to the Plaint. Obviously, defendant No.1 (appellant No.1 herein) has to provide a right of way of 8 meters width as decreed by way of Consent Terms and shown in Exhibit "A" annexed to the Plaint.

4. The Court Receiver, who stood appointed by virtue of the Consent Terms, by the order dated 21st March, 2006, directed original defendants No.1 to 3 to remove the fencing and gate and maintain the right of way of 8 meters as per the Consent Decree. The said order of the Court Receiver dated 21st March, 2006 was challenged by the defendants No.1 to 3 by taking out

Chamber Summons. The learned Chamber Judge, after hearing the parties, by the order dated 2nd May, 2006, did not find any merit in the Chamber Summons and dismissed the same giving rise to the present Appeal.

5. Mr. D.S. Parikh, the senior counsel for the appellants did not dispute that as per the Consent Decree and the plan "A" annexed to the Consent Terms, the original defendant No.1 (appellant No.1) has to provide 8 meter wide way to the respondent No.1 (original plaintiff) and his successors, agents etc. He, however, submitted that two meter wide passage out of 8 meter way was separately carved out as the large number of hutment dwellers nearby started using the way made available to the plaintiff and it is for this reason that the gate was also put up. He, however, submitted that if plaintiff insists for 8 meters wide way for his use, egress and ingress, the appellant No.1 is ready and willing to remove the fencing and the flower pots. Mr. D.S. Parikh, the senior counsel submitted that the gate has been put up to regulate the entry, ofcourse without any obstruction to the plaintiff, his successors, agents etc. and that cannot be said to be causing any obstruction to the way given under the Consent Decree to the plaintiff. He agreed that the pillar existing at the present site shall be

removed and brought to the other end of the passage to have the clear width of 8 meters.

6. Mr. D.D. Madon, the senior counsel for the plaintiff-respondent No.1 submitted that the plaintiff's right of way of 8 meters width given under the Consent Terms cannot be permitted to be interfered with by the first defendant. He did not have much objection if the gates on either side of the way were reinstalled making available 8 meter wide way to the plaintiff, its successors, agents, etc.

7. From the submission of Mr. D.S. Parikh, the senior counsel for the appellants, it is clear that the first defendant (appellant No.1) does not dispute that the plaintiff is entitled to 8 meter wide way shown in plan "A" annexed with the Consent Terms. Obviously, the defendant No.1 cannot be permitted to put up any obstruction that denies the plaintiff the right of way to the extent of 8 meters as provided in the Consent Terms. It is for this reason that, as a matter of fact, Mr. D.S. Parikh agreed that the fencing and flower pots shall be removed by the defendant No.1. As regards the gates on either side of the way, we find merit in

the oral submission of Mr. D.S. Parikh that these have been put up to ensure that undesirable people do not use the said road, though such case has not been specifically set up by the original defendant No.1 before the Court Receiver or in the Affidavit in support of the Chamber Summons. We are of the view that installation of gates on either side of the way with unhindered access to the plaintiff, its successors, agents etc., is for the benefit of the parties and preservation of the way. The two gates shall enable the first defendant to regulate the access to the said way by the people other than the plaintiff, its successors, agents etc.

8. We, accordingly, dispose of the Appeal by the following order:

(i) The defendant No.1 (appellant No.1) shall remove the fencing, flower pots etc., if not removed so far, within two weeks from today failing which, we direct the Court Receiver to take necessary steps and ensure that 8 meter width road is made available to the plaintiff in the entire stretch as per plan "A" annexed with the consent term.

(ii) On the either side of the way, the gates may be reinstalled by the first defendant making available to the plaintiff, clear 8 meter width road. Both these gates shall be manned by the security guards appointed by the plaintiff and the first defendant by consent and their expenditure shall be borne equally by them.

(iii) The plaintiff as well as the first defendant shall ensure that by regulating the aforesaid gates, no inconvenience is caused to either of them and that plaintiff, its successors, agents etc. are made available 8 meters width way at all times.

. Order accordingly.

Sd/-
[R.M. LODHA, J.]

Sd/-
[S.A. BOBDE, J.]